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In the Supreme Court of the United States

OCTOBER TERM, 1959

ANTHONY BUCCIERO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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In the Supreme Court of the United States

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No. 838

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v.

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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 1–4) is reported at 274 F. 2d 540.

JURISDICTION

The judgment of the court of appeals was entered on February 4, 1960 (Pet. App. 5). A petition for rehearing was denied on March 8, 1960 (Pet. App. 6). The petition for a writ of certiorari was filed on April 7, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether, in a prosecution for illegally possessing and passing a counterfeit $100 note, the court properly

permitted evidence as to possession of another note on the same date to show petitioner's intent and plan to pass counterfeit notes.

2. Whether the prosecution sustained its burden of proving petitioner's knowledge that the note was counterfeit.

STATUTE INVOLVED

18 U.S.C. 472 provides:

> Whoever, with intent to defraud, passes, utters, publishes, or sells, or attempts to pass, utter, publish, or sell, or with like intent brings into the United States or keeps in possession or conceals any falsely made, forged, counterfeited, or altered obligation or other security of the United States, shall be fined not more than $5,000 or imprisoned not more than fifteen years, or both.

STATEMENT

Petitioner and a codefendant, Ricciardi, were charged with violations of 18 U.S.C. 472, *supra*, in an indictment returned in the United States District Court for the Northern District of Illinois. Count 1 charged both defendants with possessing and concealing a counterfeit $100 note, count 2 charged the same offense with respect to a different $100 note, and count 3 charged the passing as genuine of the note described in count 2 (App. 2–4).[1] Count 4 charged Ricciardi with possessing and concealing 446 counterfeit $100 notes (App. 4–5). Ricciardi pleaded guilty and testified for the government (App. 7, 11).

[1] "App." refers to the appendix to petitioner's brief in the court of appeals which has been filed in this Court.

Petitioner filed a motion to require an election between counts 1 and 2, and the government elected to proceed on counts 2 and 3 only (App. 6, 7). In a non-jury trial, the court found petitioner guilty on counts 2 and 3, and sentenced him to imprisonment for one year and one day (App. 8, 41, 42). On appeal (App. 43–44), the conviction was affirmed (Pet. App. 5).

Pertinent evidence adduced at the trial may be summarized as follows:

On January 10, 1959, petitioner, Ricciardi, Mrs. Walker, and Ricciardi's aunt, Lena Charles, were in a restaurant owned by Mrs. Charles. Ricciardi displayed about ten $100 bills to the other three, stated that they were counterfeit, and announced that he was going to sell them for $30 per bill. Lena Charles told Ricciardi that his uncle had said that a $100 bill previously received from Ricciardi was "fake or phony," and petitioner inquired if she would like fifty thousand dollars worth (App. 9, 10, 12). Petitioner observed that the bills shown by Ricciardi did not look like real money, but he asked to take one since he might know someone who would like it (App. 10, 12). After Ricciardi gave him a bill, petitioner and Mrs. Walker showed it to petitioner's sister, who said that it was not real and to give it back (App. 10, 38).

Petitioner suggested that Ricciardi cash one of the bills by purchasing an airplane ticket under an assumed name at Midway Airport. Ricciardi ordered a ticket, but was scared and walked out without cashing the bill (App. 12). Petitioner and Ricciardi then talked to police officer Finocchio in his squad car at

the airport. In showing one of the $100 bills, petitioner said, "How do you like this, it is queer" (App. 20). Finocchio stated that the bill looked good when he compared it with a $100 bill which he had (App. 22, 13). Petitioner made an appointment (which he did not keep) to meet Finocchio at a later date for the sale of $100 bills at $10 per $100, and gave Finocchio as a sample a $100 bill which he had obtained from Ricciardi (App. 20). Finocchio later that evening turned over this bill (Gov. Ex. 3, designated in count 1) to agent Peyton of the Secret Service. It was admitted in evidence over objection that it was not involved in any count on trial and did not tend to prove any issue in the case (App. 21).

Later the same day (January 10, 1959), upon petitioner's suggestion that Ricciardi purchase a portable radio under an assumed name, the two men went to an appliance store. Both were present when Ricciardi gave the sales clerk a $100 bill (Gov. Ex. 4, designated in counts 2 and 3) to be cashed. Petitioner left the store first and Ricciardi also left after the proprietor became suspicious of the bill and tried to contact the police (App. 13, 23–24). Government Exhibit 4, which the proprietor had turned over to Secret Service, was admitted in evidence over the objection that it was not shown that petitioner had examined or handled the bill (App. 23).

After petitioner's arrest, on January 15, 1959, he arranged for a Secret Service agent, posing as a truck driver, to purchase some counterfeit bills from Ricciardi. When Ricciardi was arrested he had in his home the 446 bills mentioned in count 4 (App. 17,

25–27). Agent Weinstein testified that, shortly after Ricciardi's arrest, petitioner admitted that he had known before he started his venture that the bills were counterfeit (App. 25). On January 27, 1959, in reply to a remark by agent Peyton that when Ricciardi and petitioner left the restaurant he knew the bills were counterfeit, petitioner answered, "Sure, I did" (App. 28–29). On another occasion a few days before the trial, petitioner, in the presence of Ricciardi's aunt and uncle, told Ricciardi, who stated his intention of pleading guilty, that if they both (petitioner and Ricciardi) claimed that they did not know the bills were counterfeit, they could get around the police officer's statement (App. 14).

Petitioner, testifying on his own behalf, denied previous knowledge that the bills were counterfeit (App. 36). He admitted that Ricciardi offered to pay petitioner $20 for each $100 bill which petitioner cashed (App. 32–33, 37).

ARGUMENT

1. The court did not err in permitting the introduction in evidence of the counterfeit $100 bill (Gov. Ex. 3) which was named in count 1 of the indictment. Petitioner left the bill with officer Finocchio as a sample for an intended future sale, just before he and his codefendant passed at the appliance store the bill (Gov. Ex. 4) involved in counts 2 and 3. The testimony was relevant to show petitioner's plan to pass counterfeit bills, and was admissible on the issue of intent to defraud. Cf. *Weiss* v. *United States*, 122 F.

2d 675, 682 (C.A. 5), certiorari denied, 314 U.S. 687; *United States* v. *Crowe*, 188 F. 2d 209, 212 (C.A. 7).

Cases cited by petitioner as being in conflict with the decision below (see Pet. 10, 12) hold that proof of the similar offense going to the issue of intent must be clear and convincing, and not predicated upon mere suspicion. That standard was met in the instant case. Although there was no direct testimony that Government Exhibit 3 was a counterfeit bill, there was sufficient circumstantial evidence from which the judge as trier of the facts could draw the reasonable inference that it was.[2] It was one of a number of counterfeit $100 bills, which petitioner and Ricciardi were intent upon passing on the same date and from which Government Exhibit 4 (the counterfeit bill involved in counts 2 and 3) was taken. Since petitioner made an appointment with officer Finocchio for the later sale of $100 bills at $10 per $100 and gave him Government Exhibit 3 as a sample, Finocchio could reasonably believe that the bill was counterfeit, and accordingly turned it in to the Secret Service (App. 20, 21). It is significant, moreover, that in his own testimony petitioner related that he and Ricciardi had talked to the officer about the sale of money (App. 32), and petitioner admitted that he had left the bill with the officer (App. 35).

Proof of a similar offense was not, as petitioner contends, tantamount to a conviction under count 1. Evidence as to this similar offense would have been

[2] When petitioner objected to the admissibility of Government Exhibit 3, he did not assign as a reason the alleged failure to prove that it was a counterfeit bill (App. 21).

admissible even if there had never been a count 1 designating the counterfeit bill. The conviction and sentence were on counts 2 and 3 alone (App. 8, 42).

2. We agree with petitioner (see Pet. 15) that the burden of proof was upon the government to show his knowledge that the $100 note was counterfeit—and not upon him to prove knowledge that the currency was good. The government, however, amply sustained its burden. The evidence showed that Ricciardi told petitioner that the bills were counterfeit and that petitioner himself admitted after his arrest that he knew this fact. This and the other evidence of petitioner's activities (see *supra*, pp. 3–5) was clearly sufficient to justify the finding that petitioner knew that the note involved in counts 2 and 3 was counterfeit. Cf. *United States* v. *Kelley*, 186 F. 2d 598 (C.A. 7), certiorari denied, 341 U.S. 954; *Marson* v. *United States*, 203 F. 2d 904 (C.A. 6); *Carrullo* v. *United States*, 184 F. 2d 743 (C.A. 8).

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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